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Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics

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Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics

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One of the very few Black women's studies books is entitled *All the Women Are White; All the Blacks Are Men, But Some of Us are Brave.*[1] I have chosen this title as a point of departure in my efforts to develop a Black feminist criticism[2] because it sets forth a problematic consequence of the tendency to treat race and gender as mutually exclusive categories of experience and analysis.[3] In this talk, I want to examine how this tendency is perpetuated by a single-axis framework that is dominant in antidiscrimination law and that is also reflected in feminist theory and antiracist politics.

I will center Black women in this analysis in order to contrast the multidimensionality of Black women's experience with the single-axis analysis that distorts these experiences. Not only will this juxtaposition reveal how Black women are theoretically erased, it will also illustrate how this framework imports its own theoretical limitations that undermine efforts to broaden feminist and an-

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[1] Gloria T. Hull, et al, eds (The Feminist Press, 1982).

[2] For other work setting forth a Black feminist perspective on law, see Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights (Voices of Experience: New Responses to Gender Discourse)*, 24 Harv CR-CL L Rev 9 (1989); Regina Austin, *Sapphire-Bound!*, forthcoming in Wisc Women's L J (1989); Angela Harris, *Race and Essentialism in Feminist Legal Theory* (unpublished manuscript on file with author); and Paulette M. Caldwell, *A Hair Piece* (unpublished manuscript on file with author).

[3] The most common linguistic manifestation of this analytical dilemma is represented in the conventional usage of the term "Blacks and women." Although it may be true that some people mean to include Black women in either "Blacks" or "women," the context in which the term is used actually suggests that often Black women are not considered. See, for example, Elizabeth Spelman, *The Inessential Woman* 114-15 (Beacon Press, 1988) (discussing an article on Blacks and women in the military where "the racial identity of those identified as 'women' does not become explicit until reference is made to Black women, at which point it also becomes clear that the category of women excludes Black women"). It seems that if Black women were explicitly included, the preferred term would be either "Blacks and white women" or "Black men and all women."

tiracist analyses. With Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical axis. I want to suggest further that this single-axis framework erases Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group. In other words, in race discrimination cases, discrimination tends to be viewed in terms of sex- or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women.

This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. I suggest further that this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.

After examining the doctrinal manifestations of this single-axis framework, I will discuss how it contributes to the marginalization of Black women in feminist theory and in antiracist politics. I argue that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Thus, for feminist theory and antiracist policy discourse to embrace the experiences and concerns of Black women, the entire framework that has been used as a basis for translating "women's experience" or "the Black experience" into concrete policy demands must be rethought and recast.

As examples of theoretical and political developments that miss the mark with respect to Black women because of their failure to consider intersectionality, I will briefly discuss the feminist critique of rape and separate spheres ideology, and the public policy debates concerning female-headed households within the Black community.

I. THE ANTIDISCRIMINATION FRAMEWORK

A. The Experience of Intersectionality and the Doctrinal Response

One way to approach the problem of intersectionality is to examine how courts frame and interpret the stories of Black women plaintiffs. While I cannot claim to know the circumstances underlying the cases that I will discuss, I nevertheless believe that the way courts interpret claims made by Black women is itself part of Black women's experience and, consequently, a cursory review of cases involving Black female plaintiffs is quite revealing. To illustrate the difficulties inherent in judicial treatment of intersectionality, I will consider three Title VII[4] cases: *DeGraffenreid v General Motors*,[5] *Moore v Hughes Helicopter*[6] and *Payne v Travenol*.[7]

1. *DeGraffenreid v General Motors.*

In *DeGraffenreid*, five Black women brought suit against General Motors, alleging that the employer's seniority system perpetuated the effects of past discrimination against Black women. Evidence adduced at trial revealed that General Motors simply did not hire Black women prior to 1964 and that all of the Black women hired after 1970 lost their jobs in a seniority-based layoff during a subsequent recession. The district court granted summary judgment for the defendant, rejecting the plaintiffs' attempt to bring a suit not on behalf of Blacks or women, but specifically on behalf of Black women. The court stated:

> [P]laintiffs have failed to cite any decisions which have stated that Black women are a special class to be protected from discrimination. The Court's own research has failed to disclose such a decision. The plaintiffs are clearly entitled to a remedy if they have been discriminated against. However, they should not be allowed to combine statutory remedies to create a new 'super-remedy' which would give them relief beyond what the drafters of the relevant statutes intended. Thus, this lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both.[8]

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[4] Civil Rights Act of 1964, 42 USC § 2000e, et seq as amended (1982).

[5] 413 F Supp 142 (E D Mo 1976).

[6] 708 F2d 475 (9th Cir 1983).

[7] 673 F2d 798 (5th Cir 1982).

[8] *DeGraffenreid*, 413 F Supp at 143.

Although General Motors did not hire Black women prior to 1964, the court noted that "General Motors has hired . . . female employees for a number of years prior to the enactment of the Civil Rights Act of 1964."[9] Because General Motors did hire women—albeit *white women*—during the period that no Black women were hired, there was, in the court's view, no sex discrimination that the seniority system could conceivably have perpetuated.

After refusing to consider the plaintiffs' sex discrimination claim, the court dismissed the race discrimination complaint and recommended its consolidation with another case alleging race discrimination against the same employer.[10] The plaintiffs responded that such consolidation would defeat the purpose of their suit since theirs was not purely a race claim, but an action brought specifically on behalf of Black women alleging race *and* sex discrimination. The court, however, reasoned:

> The legislative history surrounding Title VII does not indicate that the goal of the statute was to create a new classification of 'black women' who would have greater standing than, for example, a black male. The prospect of the creation of new classes of protected minorities, governed only by the mathematical principles of permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box.[11]

Thus, the court apparently concluded that Congress either did not contemplate that Black women could be discriminated against as "Black women" or did not intend to protect them when such discrimination occurred.[12] The court's refusal in *DeGraffenreid* to

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[9] Id at 144.

[10] Id at 145. In *Mosley v General Motors*, 497 F Supp 583 (E D Mo 1980), plaintiffs, alleging broad-based racial discrimination at General Motors' St. Louis facility, prevailed in a portion of their Title VII claim. The seniority system challenged in *DeGraffenreid*, however, was not considered in *Mosley*.

[11] Id at 145.

[12] Interestingly, no case has been discovered in which a court denied a white male's attempt to bring a reverse discrimination claim on similar grounds—that is, that sex and race claims cannot be combined because Congress did not intend to protect compound classes. White males in a typical reverse discrimination case are in no better position than the frustrated plaintiffs in *DeGraffenreid*: If they are required to made their claims separately, white males cannot prove race discrimination because white women are not discriminated against, and they cannot prove sex discrimination because Black males are not discriminated against. Yet it seems that courts do not acknowledge the compound nature of most reverse discrimination cases. That Black women's claims automatically raise the question of compound discrimination and white males' "reverse discrimination" cases do not suggest

acknowledge that Black women encounter combined race and sex discrimination implies that the boundaries of sex and race discrimination doctrine are defined respectively by white women's and Black men's experiences. Under this view, Black women are protected only to the extent that their experiences coincide with those of either of the two groups.[13] Where their experiences are distinct, Black women can expect little protection as long as approaches, such as that in *DeGraffenreid*, which completely obscure problems of intersectionality prevail.

2. *Moore v Hughes Helicopter, Inc.*.

Moore v Hughes Helicopters, Inc.[14] presents a different way in which courts fail to understand or recognize Black women's claims. *Moore* is typical of a number of cases in which courts refused to certify Black females as class representatives in race *and* sex discrimination actions.[15] In *Moore*, the plaintiff alleged that the employer, Hughes Helicopter, practiced race and sex discrimination in promotions to upper-level craft positions and to supervisory jobs. Moore introduced statistical evidence establishing a significant disparity between men and women, and somewhat less of a disparity between Black and white men in supervisory jobs.[16]

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that the notion of compoundedness is somehow contingent upon an implicit norm that is not neutral but is white male. Thus, Black women are perceived as a compound class because they are two steps removed from a white male norm, while white males are apparently not perceived to be a compound class because they somehow represent the norm.

[13] I do not mean to imply that all courts that have grappled with this problem have adopted the *DeGraffenreid* approach. Indeed, other courts have concluded that Black women are protected by Title VII. See, for example, *Jefferies v Harris Community Action Ass'n.*, 615 F2d 1025 (5th Cir 1980). I do mean to suggest that the very fact that the Black women's claims are seen as aberrant suggests that sex discrimination doctrine is centered in the experiences of white women. Even those courts that have held that Black women are protected seem to accept that Black women's claims raise issues that the "standard" sex discrimination claims do not. See Elaine W. Shoben, *Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination*, 55 NYU L Rev 793, 803-04 (1980) (criticizing the *Jefferies* use of a sex-plus analysis to create a subclass of Black women).

[14] 708 F2d 475.

[15] See also *Moore v National Association of Securities Dealers*, 27 EPD (CCH) ¶ 32,238 (D DC 1981); but see *Edmondson v Simon*, 86 FRD 375 (N D Ill 1980) (where the court was unwilling to hold as a matter of law that no Black female could represent without conflict the interests of both Blacks and females).

[16] 708 F2d at 479. Between January 1976 and June 1979, the three years in which Moore claimed that she was passed over for promotion, the percentage of white males occupying first-level supervisory positions ranged from 70.3 to 76.8%; Black males from 8.9 to 10.9%; white women from 1.8 to 3.3%; and Black females from 0 to 2.2%. The overall male/female ratio in the top five labor grades ranged from 100/0% in 1976 to 98/1.8% in 1979. The white/Black ratio was 85/3.3% in 1976 and 79.6/8% in 1979. The overall ratio of men to women in supervisory positions was 98.2 to 1.8% in 1976 to 93.4 to 6.6% in 1979; the Black to white ratio during the same time period was 78.6 to 8.9% and 73.6 to 13.1%

For promotions to the top five labor grades, the percentages were worse. Between 1976

Affirming the district court's refusal to certify Moore as the class representative in the sex discrimination complaint on behalf of all women at Hughes, the Ninth Circuit noted approvingly:

> . . . Moore had never claimed before the EEOC that she was discriminated against as a female, *but only* as a Black female . . . . [T]his raised serious doubts as to Moore's ability to adequately represent white female employees.[17]

The curious logic in *Moore* reveals not only the narrow scope of antidiscrimination doctrine and its failure to embrace intersectionality, but also the centrality of white female experiences in the conceptualization of gender discrimination. One inference that could be drawn from the court's statement that Moore's complaint did not entail a claim of discrimination "against females" is that discrimination against Black females is something less than discrimination against females. More than likely, however, the court meant to imply that Moore did not claim that *all* females were discriminated against *but only* Black females. But even thus recast, the court's rationale is problematic for Black women. The court rejected Moore's bid to represent all females apparently because her attempt to specify her race was seen as being at odds with the standard allegation that the employer simply discriminated "against females."

The court failed to see that the absence of a racial referent does not necessarily mean that the claim being made is a more inclusive one. A white woman claiming discrimination against females may be in no better position to represent all women than a Black woman who claims discrimination as a Black female and wants to represent all females. The court's preferred articulation of "against females" is not necessarily more inclusive—it just appears to be so because the racial contours of the claim are not specified.

The court's preference for "against females" rather than "against Black females" reveals the implicit grounding of white female experiences in the doctrinal conceptualization of sex discrimination. For white women, claiming sex discrimination is simply a statement that but for gender, they would not have been disadvantaged. For them there is no need to specify discrimination as *white*

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and 1979, the percentage of white males in these positions ranged from 85.3 to 77.9%; Black males 3.3 to 8%; white females from 0 to 1.4%, and Black females from 0 to 0%. Overall, in 1979, 98.2% of the highest level employees were male; 1.8% were female.

[17] 708 F2d at 480 (emphasis added).

females because their race does not contribute to the disadvantage for which they seek redress. The view of discrimination that is derived from this grounding takes race privilege as a given.

Discrimination against a white female is thus the standard sex discrimination claim; claims that diverge from this standard appear to present some sort of hybrid claim. More significantly, because Black females' claims are seen as hybrid, they sometimes cannot represent those who may have "pure" claims of sex discrimination. The effect of this approach is that even though a challenged policy or practice may clearly discriminate against all females, the fact that it has particularly harsh consequences for Black females places Black female plaintiffs at odds with white females.

Moore illustrates one of the limitations of antidiscrimination law's remedial scope and normative vision. The refusal to allow a multiply-disadvantaged class to represent others who may be singularly-disadvantaged defeats efforts to restructure the distribution of opportunity and limits remedial relief to minor adjustments within an established hierarchy. Consequently, "bottom-up" approaches, those which combine all discriminatees in order to challenge an entire employment system, are foreclosed by the limited view of the wrong and the narrow scope of the available remedy. If such "bottom-up" intersectional representation were routinely permitted, employees might accept the possibility that there is more to gain by collectively challenging the hierarchy rather than by each discriminatee individually seeking to protect her source of privilege within the hierarchy. But as long as antidiscrimination doctrine proceeds from the premise that employment systems need only minor adjustments, opportunities for advancement by disadvantaged employees will be limited. Relatively privileged employees probably are better off guarding their advantage while jockeying against others to gain more. As a result, Black women—the class of employees which, because of its intersectionality, is best able to challenge all forms of discrimination—are essentially isolated and often required to fend for themselves.

In *Moore*, the court's denial of the plaintiff's bid to represent all Blacks and females left Moore with the task of supporting her race and sex discrimination claims with statistical evidence of discrimination against Black females alone.[18] Because she was unable to represent white women or Black men, she could not use overall

[18] Id at 484-86.

statistics on sex disparity at Hughes, nor could she use statistics on race. Proving her claim using statistics on Black women alone was no small task, due to the fact that she was bringing the suit under a disparate impact theory of discrimination.[19]

The court further limited the relevant statistical pool to include only Black women who it determined were qualified to fill the openings in upper-level labor jobs and in supervisory positions.[20] According to the court, Moore had not demonstrated that there were any qualified Black women within her bargaining unit or the general labor pool for either category of jobs.[21] Finally, the court stated that even if it accepted Moore's contention that the percentage of Black females in supervisory positions should equal the percentage of Black females in the employee pool, it still would not find discriminatory impact.[22] Because the promotion of only two Black women into supervisory positions would have achieved the expected mean distribution of Black women within that job category, the court was "unwilling to agree that a prima facie case of disparate impact ha[d] been proven."[23]

The court's rulings on Moore's sex and race claim left her with such a small statistical sample that even if she had proved that there were qualified Black women, she could not have shown discrimination under a disparate impact theory. *Moore* illustrates yet another way that antidiscrimination doctrine essentially erases Black women's distinct experiences and, as a result, deems their discrimination complaints groundless.

3. *Payne v Travenol.*

Black female plaintiffs have also encountered difficulty in

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[19] Under the disparate impact theory that prevailed at the time, the plaintiff had to introduce statistics suggesting that a policy or procedure disparately affects the members of a protected group. The employer could rebut that evidence by showing that there was a business necessity supporting the rule. The plaintiff then countered the rebuttal by showing that there was a less discriminatory alternative. See, for example, *Griggs v Duke Power*, 401 US 424 (1971); *Connecticut v Teal*, 457 US 440 (1982).

A central issue in a disparate impact case is whether the impact proved is statistically significant. A related issue is how the protected group is defined. In many cases a Black female plaintiff would prefer to use statistics which include white women and/or Black men to indicate that the policy in question does in fact disparately affect the protected class. If, as in *Moore*, the plaintiff may use only statistics involving Black women, there may not be enough Black women employees to create a statistically significant sample.

[20] Id at 484.

[21] The court buttressed its finding with respect to the upper-level labor jobs with statistics for the Los Angeles Metropolitan Area which indicated the there were only 0.2% Black women within comparable job categories. Id at 485 n 9.

[22] Id at 486.

[23] Id.

their efforts to win certification as class representatives in some race discrimination actions. This problem typically arises in cases where statistics suggest significant disparities between Black and white workers and further disparities between Black men and Black women. Courts in some cases[24] have denied certification based on logic that mirrors the rationale in *Moore*: The sex disparities between Black men and Black women created such conflicting interests that Black women could not possibly represent Black men adequately. In one such case, *Payne v Travenol*,[25] two Black female plaintiffs alleging race discrimination brought a class action suit on behalf of all Black employees at a pharmaceutical plant.[26] The court refused, however, to allow the plaintiffs to represent Black males and granted the defendant's request to narrow the class to Black women only. Ultimately, the district court found that there had been extensive racial discrimination at the plant and awarded back pay and constructive seniority to the class of Black female employees. But, despite its finding of general race discrimination, the court refused to extend the remedy to Black men for fear that their conflicting interests would not be adequately addressed;[27] the Fifth Circuit affirmed.[28]

Notably, the plaintiffs in *Travenol* fared better than the similarly-situated plaintiff in *Moore*: They were not denied use of meaningful statistics showing an overall pattern of race discrimination simply because there were no men in their class. The plaintiffs' bid to represent all Black employees, however, like Moore's attempt to represent all women employees, failed as a consequence

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[24] See *Strong v Arkansas Blue Cross & Blue Shield, Inc.*, 87 FRD 496 (E D Ark 1980); *Hammons v Folger Coffee Co.*, 87 FRD 600 (W D Mo 1980); *Edmondson v Simon*, 86 FRD 375 (N D Ill 1980); *Vuyanich v Republic National Bank of Dallas*, 82 FRD 420 (N D Tex 1979); *Colston v Maryland Cup Corp.*, 26 Fed Rules Serv 940 (D Md 1978).

[25] 416 F Supp 248 (N D Miss 1976).

[26] The suit commenced on March 2, 1972, with the filing of a complaint by three employees seeking to represent a class of persons allegedly subjected to racial discrimination at the hands of the defendants. Subsequently, the plaintiffs amended the complaint to add an allegation of sex discrimination. Of the original named plaintiffs, one was a Black male and two were Black females. In the course of the three-year period between the filing of the complaint and the trial, the only named male plaintiff received permission of the court to withdraw for religious reasons. Id at 250.

[27] As the dissent in *Travenol* pointed out, there was no reason to exclude Black males from the scope of the remedy *after* counsel had presented sufficient evidence to support a finding of discrimination against Black men. If the rationale for excluding Black males was the potential conflict between Black males and Black females, then "[i]n this case, to paraphrase an old adage, the proof of plaintiffs' ability to represent the interests of Black males was in the representation thereof." 673 F2d at 837-38.

[28] 673 F2d 798 (5th Cir 1982).

of the court's narrow view of class interest.

Even though *Travenol* was a partial victory for Black women, the case specifically illustrates how antidiscrimination doctrine generally creates a dilemma for Black women. It forces them to choose between specifically articulating the intersectional aspects of their subordination, thereby risking their ability to represent Black men, or ignoring intersectionality in order to state a claim that would not lead to the exclusion of Black men. When one considers the political consequences of this dilemma, there is little wonder that many people within the Black community view the specific articulation of Black women's interests as dangerously divisive.

In sum, several courts have proved unable to deal with intersectionality, although for contrasting reasons. In *DeGraffenreid*, the court refused to recognize the possibility of compound discrimination against Black women and analyzed their claim using the employment of white women as the historical base. As a consequence, the employment experiences of white women obscured the distinct discrimination that Black women experienced.

Conversely, in *Moore*, the court held that a Black woman could not use statistics reflecting the overall sex disparity in supervisory and upper-level labor jobs because she had not claimed discrimination as a woman, but "only" as a Black woman. The court would not entertain the notion that discrimination experienced by Black women is indeed sex discrimination—provable through disparate impact statistics on women.

Finally, courts, such as the one in *Travenol*, have held that Black women cannot represent an entire class of Blacks due to presumed class conflicts in cases where sex additionally disadvantaged Black women. As a result, in the few cases where Black women are allowed to use overall statistics indicating racially disparate treatment Black men may not be able to share in the remedy.

Perhaps it appears to some that I have offered inconsistent criticisms of how Black women are treated in antidiscrimination law: I seem to be saying that in one case, Black women's claims were rejected and their experiences obscured because the court refused to acknowledge that the employment experience of Black women can be distinct from that of white women, while in other cases, the interests of Black women were harmed because Black women's claims were viewed as so distinct from the claims of either white women or Black men that the court denied to Black females representation of the larger class. It seems that I have to say that Black women are the same and harmed by being treated differ-

ently, or that they are different and harmed by being treated the same. But I cannot say both.

This apparent contradiction is but another manifestation of the conceptual limitations of the single-issue analyses that intersectionality challenges. The point is that Black women can experience discrimination in any number of ways and that the contradiction arises from our assumptions that their claims of exclusion must be unidirectional. Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.

Judicial decisions which premise intersectional relief on a showing that Black women are specifically recognized as a class are analogous to a doctor's decision at the scene of an accident to treat an accident victim only if the injury is recognized by medical insurance. Similarly, providing legal relief only when Black women show that their claims are based on race or on sex is analogous to calling an ambulance for the victim only after the driver responsible for the injuries is identified. But it is not always easy to reconstruct an accident: Sometimes the skid marks and the injuries simply indicate that they occurred simultaneously, frustrating efforts to determine which driver caused the harm. In these cases the tendency seems to be that no driver is held responsible, no treatment is administered, and the involved parties simply get back in their cars and zoom away.

To bring this back to a non-metaphorical level, I am suggesting that Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women's experiences; sometimes they share very similar experiences with Black men. Yet often they experience double-discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women.

Black women's experiences are much broader than the general categories that discrimination discourse provides. Yet the continued insistence that Black women's demands and needs be filtered

through categorical analyses that completely obscure their experiences guarantees that their needs will seldom be addressed.

B. The Significance of Doctrinal Treatment of Intersectionality

DeGraffenreid, *Moore* and *Travenol* are doctrinal manifestations of a common political and theoretical approach to discrimination which operates to marginalize Black women. Unable to grasp the importance of Black women's intersectional experiences, not only courts, but feminist and civil rights thinkers as well have treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger classes of women and Blacks. Black women are regarded either as too much like women or Blacks and the compounded nature of their experience is absorbed into the collective experiences of either group or as too different, in which case Black women's Blackness or femaleness sometimes has placed their needs and perspectives at the margin of the feminist and Black liberationist agendas.

While it could be argued that this failure represents an absence of political will to include Black women, I believe that it reflects an uncritical and disturbing acceptance of dominant ways of thinking about discrimination. Consider first the definition of discrimination that seems to be operative in antidiscrimination law: Discrimination which is wrongful proceeds from the identification of a specific class or category; either a discriminator intentionally identifies this category, or a process is adopted which somehow disadvantages all members of this category.[29] According to the dominant view, a discriminator treats all people within a race or sex category similarly. Any significant experiential or statistical variation within this group suggests either that the group is not being discriminated against or that conflicting interests exist which de-

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[29] In much of antidiscrimination doctrine, the presence of intent to discriminate distinguishes unlawful from lawful discrimination. See *Washington v Davis*, 426 US 229, 239-45 (1976) (proof of discriminatory purpose required to substantiate Equal Protection violation). Under Title VII, however, the Court has held that statistical data showing a disproportionate impact can suffice to support a finding of discrimination. See *Griggs*, 401 US at 432. Whether the distinction between the two analyses will survive is an open question. See *Wards Cove Packing Co., Inc. v Atonio*, 109 S Ct 2115, 2122-23 (1989) (plaintiffs must show more than mere disparity to support a prima facie case of disparate impact). For a discussion of the competing normative visions that underlie the intent and effects analyses, see Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 Minn L Rev 1049 (1978).

feat any attempts to bring a common claim.[30] Consequently, one generally cannot combine these categories. Race and sex, moreover, become significant only when they operate to explicitly *disadvantage* the victims; because the *privileging* of whiteness or maleness is implicit, it is generally not perceived at all.

Underlying this conception of discrimination is a view that the wrong which antidiscrimination law addresses is the use of race or gender factors to interfere with decisions that would otherwise be fair or neutral. This process-based definition is not grounded in a bottom-up commitment to improve the substantive conditions for those who are victimized by the interplay of numerous factors. Instead, the dominant message of antidiscrimination law is that it will regulate only the limited extent to which race or sex interferes with the process of determining outcomes. This narrow objective is facilitated by the top-down strategy of using a singular "but for" analysis to ascertain the effects of race or sex. Because the scope of antidiscrimination law is so limited, sex and race discrimination have come to be defined in terms of the experiences of those who are privileged *but for* their racial or sexual characteristics. Put differently, the paradigm of sex discrimination tends to be based on the experiences of white women; the model of race discrimination tends to be based on the experiences of the most privileged Blacks. Notions of what constitutes race and sex discrimination are, as a result, narrowly tailored to embrace only a small set of circumstances, none of which include discrimination against Black women.

To the extent that this general description is accurate, the following analogy can be useful in describing how Black women are marginalized in the interface between antidiscrimination law and race and gender hierarchies: Imagine a basement which contains all people who are disadvantaged on the basis of race, sex, class, sexual preference, age and/or physical ability. These people are stacked—feet standing on shoulders—with those on the bottom being disadvantaged by the full array of factors, up to the very top, where the heads of all those disadvantaged by a singular factor brush up against the ceiling. Their ceiling is actually the floor above which only those who are *not* disadvantaged in any way reside. In efforts to correct some aspects of domination, those above the ceiling admit from the basement only those who can say that "but for" the ceiling, they too would be in the upper room. A hatch

[30] See, for example, *Moore*, 708 F2d at 479.

is developed through which those placed immediately below can crawl. Yet this hatch is generally available only to those who—due to the singularity of their burden and their otherwise privileged position relative to those below—are in the position to crawl through. Those who are multiply-burdened are generally left below unless they can somehow pull themselves into the groups that are permitted to squeeze through the hatch.

As this analogy translates for Black women, the problem is that they can receive protection only to the extent that their experiences are recognizably similar to those whose experiences tend to be reflected in antidiscrimination doctrine. If Black women cannot conclusively say that "but for" their race or "but for" their gender they would be treated differently, they are not invited to climb through the hatch but told to wait in the unprotected margin until they can be absorbed into the broader, protected categories of race and sex.

Despite the narrow scope of this dominant conception of discrimination and its tendency to marginalize those whose experiences cannot be described within its tightly-drawn parameters, this approach has been regarded as the appropriate framework for addressing a range of problems. In much of feminist theory and, to some extent, in antiracist politics, this framework is reflected in the belief that sexism or racism can be meaningfully discussed without paying attention to the lives of those other than the race-, gender- or class-privileged. As a result, both feminist theory and antiracist politics have been organized, in part, around the equation of racism with what happens to the Black middle-class or to Black men, and the equation of sexism with what happens to white women.

Looking at historical and contemporary issues in both the feminist and the civil rights communities, one can find ample evidence of how both communities' acceptance of the dominant framework of discrimination has hindered the development of an adequate theory and praxis to address problems of intersectionality. This adoption of a single-issue framework for discrimination not only marginalizes Black women within the very movements that claim them as part of their constituency but it also makes the illusive goal of ending racism and patriarchy even more difficult to attain.

II. Feminism and Black Women: "Ain't We Women?"

Oddly, despite the relative inability of feminist politics and theory to address Black women substantively, feminist theory and

tradition borrow considerably from Black women's history. For example, "Ain't I a Woman" has come to represent a standard refrain in feminist discourse.[31] Yet the lesson of this powerful oratory is not fully appreciated because the context of the delivery is seldom examined. I would like to tell part of the story because it establishes some themes that have characterized feminist treatment of race and illustrates the importance of including Black women's experiences as a rich source for the critique of patriarchy.

In 1851, Sojourner Truth declared "Ain't I a Woman?" and challenged the sexist imagery used by male critics to justify the disenfranchisement of women.[32] The scene was a Women's Rights Conference in Akron, Ohio; white male hecklers, invoking stereotypical images of "womanhood," argued that women were too frail and delicate to take on the responsibilities of political activity. When Sojourner Truth rose to speak, many white women urged that she be silenced, fearing that she would divert attention from women's suffrage to emancipation. Truth, once permitted to speak, recounted the horrors of slavery, and its particular impact on Black women:

> Look at my arm! I have ploughed and planted and gathered into barns, and no man could head me—and ain't I a woman? I could work as much and eat as much as a man—when I could get it—and bear the lash as well! And ain't I a woman? I have born thirteen children, and seen most of 'em sold into slavery, and when I cried out with my mother's grief, none but Jesus heard me—and ain't I a woman?[33]

By using her own life to reveal the contradiction between the ideological myths of womanhood and the reality of Black women's experience, Truth's oratory provided a powerful rebuttal to the claim that women were categorically weaker than men. Yet Truth's personal challenge to the coherence of the cult of true womanhood

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[31] See Phyliss Palmer, *The Racial Feminization of Poverty: Women of Color as Portents of the Future for All Women*, Women's Studies Quarterly 11:3-4 (Fall 1983) (posing the question of why "white women in the women's movement had not created more effective and continuous alliances with Black women" when "simultaneously . . . Black women [have] become heroines for the women's movement, a position symbolized by the consistent use of Sojourner Truth and her famous words, "Ain't I a Woman?").

[32] See Paula Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* 54 (William Morrow and Co, Inc, 1st ed 1984).

[33] Eleanor Flexner, *Century of Struggle: The Women's Rights Movement in the United States* 91 (Belknap Press of Harvard University Press, 1975). See also Bell Hooks, *Ain't I a Woman* 159-60 (South End Press, 1981).

was useful only to the extent that white women were willing to reject the racist attempts to rationalize the contradiction—that because Black women were something less than real women, their experiences had no bearing on true womanhood. Thus, this 19th-century Black feminist challenged not only patriarchy, but she also challenged white feminists wishing to embrace Black women's history to relinquish their vestedness in whiteness.

Contemporary white feminists inherit not the legacy of Truth's challenge to patriarchy but, instead, Truth's challenge to their forbearers. Even today, the difficulty that white women have traditionally experienced in sacrificing racial privilege to strengthen feminism renders them susceptible to Truth's critical question. When feminist theory and politics that claim to reflect *women's* experience and *women's* aspirations do not include or speak to Black women, Black women must ask: "Ain't *We* Women?" If this is so, how can the claims that "women are," "women believe" and "women need" be made when such claims are inapplicable or unresponsive to the needs, interests and experiences of Black women?

The value of feminist theory to Black women is diminished because it evolves from a white racial context that is seldom acknowledged. Not only are women of color in fact overlooked, but their exclusion is reinforced when *white* women speak for and as *women*. The authoritative universal voice—usually white male subjectivity masquerading as non-racial, non-gendered objectivity[34]—is merely transferred to those who, but for gender, share many of the same cultural, economic and social characteristics. When feminist theory attempts to describe women's experiences through analyzing patriarchy, sexuality, or separate spheres ideology, it often overlooks the role of race. Feminists thus ignore how their own race functions to mitigate some aspects of sexism and, moreover, how it often privileges them over and contributes to the domination of other women.[35] Consequently, feminist theory remains *white*, and its potential to broaden and deepen its analysis by addressing non-privileged women remains unrealized.

An example of how some feminist theories are narrowly con-

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[34] "'Objectivity' is itself an example of the reification of white male thought." Hull et al, eds, *But Some of Us Are Brave* at XXV (cited in note 1).

[35] For example, many white females were able to gain entry into previously all white male enclaves not through bringing about a fundamental reordering of male versus female work, but in large part by shifting their "female" responsibilities to poor and minority women.

structured around white women's experiences is found in the separate spheres literature. The critique of how separate spheres ideology shapes and limits women's roles in the home and in public life is a central theme in feminist legal thought.[36] Feminists have attempted to expose and dismantle separate spheres ideology by identifying and criticizing the stereotypes that traditionally have justified the disparate societal roles assigned to men and women.[37] Yet this attempt to debunk ideological justifications for *women's* subordination offers little insight into the domination of *Black* women. Because the experiential base upon which many feminist insights are grounded is white, theoretical statements drawn from them are overgeneralized at best, and often wrong.[38] Statements such as "men and women are taught to see men as independent, capable, powerful; men and women are taught to see women as dependent, limited in abilities, and passive,"[39] are common within this literature. But this "observation" overlooks the anomalies created by crosscurrents of racism and sexism. Black men and women live in a society that creates sex-based norms and expectations which racism operates simultaneously to deny; Black men are not viewed as powerful, nor are Black women seen as passive. An effort to develop an ideological explanation of gender domination in the Black community should proceed from an understanding of how crosscutting forces establish gender norms and how the conditions

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[36] Feminists often discuss how gender-based stereotypes and norms reinforce the subordination of women by justifying their exclusion from public life and glorifying their roles within the private sphere. Law has historically played a role in maintaining this subordination by enforcing the exclusion of women from public life and by limiting its reach into the private sphere. See, for example, Deborah L. Rhode, *Association and Assimilation*, 81 Nw U L Rev 106 (1986); Frances Olsen, *From False Paternalism to False Equality: Judicial Assaults on Feminist Community, Illinois 1869-95*, 84 Mich L Rev 1518 (1986); Martha Minow, *Foreword: Justice Engendered*, 101 Harv L Rev 10 (1987); Nadine Taub and Elizabeth M. Schneider, *Perspectives on Women's Subordination and the Role of Law*, in David Kairys, ed, *The Politics of Law* 117-39 (Pantheon Books, 1982).

[37] See works cited in note 36.

[38] This criticism is a discrete illustration of a more general claim that feminism has been premised on white middle-class women's experience. For example, early feminist texts such as Betty Friedan's *The Feminine Mystique* (W. W. Norton, 1963), placed white middle-class problems at the center of feminism and thus contributed to its rejection within the Black community. See Hooks, *Ain't I a Woman* at 185-96 (cited in note 33) (noting that feminism was eschewed by Black women because its white middle-class agenda ignored Black women's concerns).

[39] Richard A. Wasserstrom, *Racism, Sexism and Preferential Treatment: An Approach to the Topics*, 24 UCLA L Rev 581, 588 (1977). I chose this phrase not because it is typical of most feminist statements of separate spheres; indeed, most discussions are not as simplistic as the bold statement presented here. See, for example, Taub and Schneider, *Perspectives on Women's Subordination and the Role of Law* at 117-39 (cited in note 36).

of Black subordination wholly frustrate access to these norms. Given this understanding, perhaps we can begin to see why Black women have been dogged by the stereotype of the pathological matriarch[40] or why there have been those in the Black liberation movement who aspire to create institutions and to build traditions that are intentionally patriarchal.[41]

Because ideological and descriptive definitions of patriarchy are usually premised upon white female experiences, feminists and others informed by feminist literature may make the mistake of assuming that since the role of Black women in the family and in other Black institutions does not always resemble the familiar manifestations of patriarchy in the white community, Black women are somehow exempt from patriarchal norms. For example, Black women have traditionally worked outside the home in numbers far exceeding the labor participation rate of white women.[42] An analysis of patriarchy that highlights the history of white women's exclusion from the workplace might permit the inference that Black women have not been burdened by this particular gender-based expectation. Yet the very fact that Black women must work conflicts with norms that women should not, often creating personal, emotional and relationship problems in Black women's lives. Thus, Black women are burdened not only because they often have to take on responsibilities that are not traditionally feminine but, moreover, their assumption of these roles is sometimes interpreted within the Black community as either Black women's failure to live up to such norms or as another manifestation of racism's scourge upon the Black community.[43] This is one of the many aspects of intersectionality that cannot be understood

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[40] For example, Black families have sometimes been cast as pathological largely because Black women's divergence from the white middle-class female norm. The most infamous rendition of this view is found in the Moynihan report which blamed many of the Black community's ills on a supposed pathological family structure. For a discussion of the report and its contemporary reincarnation, see pp 163-165.

[41] See Hooks, *Ain't I a Woman* at 94-99 (cited in note 33) (discussing the elevation of sexist imagery in the Black liberation movement during the 1960s).

[42] See generally Jacqueline Jones, *Labor of Love, Labor of Sorrow; Black Women, Work, and the Family from Slavery to the Present* (Basic Books, 1985); Angela Davis, *Women, Race and Class* (Random House, 1981).

[43] As Elizabeth Higginbotham noted, "women, who often fail to conform to 'appropriate' sex roles, have been pictured as, and made to feel, inadequate—even though as women, they possess traits recognized as positive when held by men in the wider society. Such women are stigmatized because their lack of adherence to expected gender roles is seen as a threat to the value system." Elizabeth Higginbotham, *Two Representative Issues in Contemporary Sociological Work on Black Women*, in Hull, et al, eds, *But Some of Us Are Brave* at 95 (cited in note 1).

through an analysis of patriarchy rooted in white experience.

Another example of how theory emanating from a white context obscures the multidimensionality of Black women's lives is found in feminist discourse on rape. A central political issue on the feminist agenda has been the pervasive problem of rape. Part of the intellectual and political effort to mobilize around this issue has involved the development of a historical critique of the role that law has played in establishing the bounds of normative sexuality and in regulating female sexual behavior.[44] Early carnal knowledge statutes and rape laws are understood within this discourse to illustrate that the objective of rape statutes traditionally has not been to protect women from coercive intimacy but to protect and maintain a property-like interest in female chastity.[45] Although feminists quite rightly criticize these objectives, to characterize rape law as reflecting male control over female sexuality is for Black women an oversimplified account and an ultimately inadequate account.

Rape statutes generally do not reflect *male* control over *female* sexuality, but *white* male regulation of *white* female sexuality.[46] Historically, there has been absolutely no institutional effort to regulate Black female chastity.[47] Courts in some states had gone so far as to instruct juries that, unlike white women, Black women were not presumed to be chaste.[48] Also, while it was true that the

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[44] See generally Susan Brownmiller, *Against Our Will* (Simon and Schuster, 1975); Susan Estrich, *Real Rape* (Harvard University Press, 1987).

[45] See Brownmiller, *Against Our Will* at 17; see generally Estrich, *Real Rape*.

[46] One of the central theoretical dilemmas of feminism that is largely obscured by universalizing the white female experience is that experiences that are described as a manifestation of male control over females can be instead a manifestation of dominant group control over all subordinates. The significance is that other nondominant men may not share in, participate in or connect with the behavior, beliefs or actions at issue, and may be victimized themselves by "male" power. In other contexts, however, "male authority" might include nonwhite men, particularly in private sphere contexts. Efforts to think more clearly about when Black women are dominated as *women* and when they are dominated as *Black women* are directly related to the question of when power is *male* and when it is *white male*.

[47] See Note, *Rape, Racism and the Law*, 6 Harv Women's L J 103, 117-23 (1983) (discussing the historical and contemporary evidence suggesting that Black women are generally not thought to be chaste). See also Hooks, *Ain't I a Woman* at 54 (cited in note 33) (stating that stereotypical images of Black womanhood during slavery were based on the myth that "all black women were immoral and sexually loose"); Beverly Smith, *Black Women's Health: Notes for a Course*, in Hull et al, eds, *But Some of Us Are Brave* at 110 (cited in note 1) (noting that ". . . white men for centuries have justified their sexual abuse of Black women by claiming that we are licentious, always 'ready' for any sexual encounter").

[48] The following statement is probably unusual only in its candor: "What has been said by some of our courts about an unchaste female being a comparatively rare exception is no doubt true where the population is composed largely of the Caucasian race, but we would blind ourselves to actual conditions if we adopted this rule where another race that is largely

attempt to regulate the sexuality of white women placed unchaste women outside the law's protection, racism restored a fallen white woman's chastity where the alleged assailant was a Black man.[49] No such restoration was available to Black women.

The singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror.[50] When Black women were raped by white males, they were being raped not as women generally, but as Black women specifically: Their femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied

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immoral constitutes an appreciable part of the population." *Dallas v State*, 76 Fla 358, 79 So 690 (1918), quoted in Note, 6 Harv Women's L J at 121 (cited in note 47).

Espousing precisely this view, one commentator stated in 1902: "I sometimes hear of a virtuous Negro woman but the idea is so absolutely inconceivable to me . . . I cannot imagine such a creature as a virtuous Negro woman." Id at 82. Such images persist in popular culture. See Paul Grein, *Taking Stock of the Latest Pop Record Surprises*, LA Times § 6 at 1 (July 7, 1988) (recalling the controversy in the late 70s over a Rolling Stones recording which included the line "Black girls just wanna get fucked all night").

Opposition to such negative stereotypes has sometimes taken the form of sexual conservatism. "A desperate reaction to this slanderous myth is the attempt . . . to conform to the strictest versions of patriarchal morality." Smith, *Black Women's Health*, in Hull et al, eds, *But Some of Us Are Brave* at 111 (cited in note 1). Part of this reaction is reflected in the attitudes and policies of Black schools which have been notoriously strict in regulating the behavior of female students. See Gail Elizabeth Wyatt, *The Sexual Experience of Afro-American Women*, in Martha Kirkpatrick, ed, *Women's Sexual Experience: Exploration of the Dark Continent* 24 (Plenum, 1982) (noting "the differences between the predominantly Afro-American universities, where there was far more supervision regarding sexual behavior, and the majority of white colleges, where there were fewer curfews and restrictions placed on the resident"). Any attempt to understand and critique the emphasis on Black virtue without focusing on the racist ideology that places virtue beyond the reach of Black women would be incomplete and probably incorrect.

[49] Because of the way the legal system viewed chastity, Black women could not be victims of forcible rape. One commentator has noted that "[a]ccording to governing sterotypes [sic], chastity could not be possessed by Black women. Thus, Black women's rape charges were automatically discounted, and the issue of chastity was contested only in cases where the rape complainant was a white woman." Note, 6 Harv Women's L J at 126 (cited in note 47). Black women's claims of rape were not taken seriously regardless of the offender's race. A judge in 1912 said: "This court will never take the word of a nigger against the word of a white man [concerning rape]." Id at 120. On the other hand, lynching was considered an effective remedy for a Black man's rape of a white woman. Since rape of a white woman by a Black man was "a crime more horrible than death," the only way to assuage society's rage and to make the woman whole again was to brutally murder the Black man. Id at 125.

[50] See *The Rape of Black Women as a Weapon of Terror*, in Gerda Lerner, ed, *Black Women in White America* 172-93 (Pantheon Books, 1972). See also Brownmiller, *Against Our Will* (cited in note 44). Even where Brownmiller acknowledges the use of rape as racial terrorism, she resists making a "special case" for Black women by offering evidence that white women were raped by the Klan as well. Id at 139. Whether or not one considers the racist rape of Black women a "special case," such experiences are probably different. In any case, Brownmiller's treatment of the issue raises serious questions about the ability to sustain an analysis of patriarchy without understanding its multiple intersections with racism.

them any protection.[51] This white male power was reinforced by a judicial system in which the successful conviction of a white man for raping a Black woman was virtually unthinkable.[52]

In sum, sexist expectations of chastity and racist assumptions of sexual promiscuity combined to create a distinct set of issues confronting Black women.[53] These issues have seldom been explored in feminist literature nor are they prominent in antiracist politics. The lynching of Black males, the institutional practice that was legitimized by the regulation of white women's sexuality, has historically and contemporaneously occupied the Black agenda on sexuality and violence. Consequently, Black women are caught between a Black community that, perhaps understandably, views with suspicion attempts to litigate questions of sexual violence, and a feminist community that reinforces those suspicions by focusing on white female sexuality.[54] The suspicion is compounded

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[51] Lerner, *Black Women in White America* at 173.

[52] See generally, Note, 6 Harv Women's L J at 103 (cited in note 47).

[53] Paula Giddings notes the combined effect of sexual and racial stereotypes: "Black women were seen having all of the inferior qualities of white women without any of their virtues." Giddings, *When and Where I Enter* at 82 (cited in note 32).

[54] Susan Brownmiller's treatment of the Emmett Till case illustrates why antirape politicization makes some African Americans uncomfortable. Despite Brownmiller's quite laudable efforts to discuss elsewhere the rape of Black women and the racism involved in much of the hysteria over the Black male threat, her analysis of the Till case places the sexuality of white women, rather than racial terrorism, at center stage. Brownmiller states: "Rarely has one single case exposed so clearly as Till's the underlying group-male antagonisms over access to women, for what began in Bryant's store should not be misconstrued as an innocent flirtation . . . . In concrete terms, the accessibility of all white women was on review." Brownmiller, *Against Our Will* at 272 (cited in note 44).

Later, Brownmiller argues:

> And what of the wolf whistle, Till's 'gesture of adolescent bravado'? We are rightly aghast that a whistle could be cause for murder but we must also accept that Emmett Till and J. W. Millam shared something in common. They both understood that the whistle was no small tweet of hubba-hubba or melodious approval for a well-turned ankle. Given the deteriorated situation . . . it was a deliberate insult just short of physical assault, a last reminder to Carolyn Bryant that this black boy, Till, had a mind to possess her.

Id at 273.

While Brownmiller seems to categorize the case as one that evidences a conflict over possession, it is regarded in African American history as a tragic dramatization of the South's pathological hatred and fear of African Americans. Till's body, mutilated beyond recognition, was viewed by thousands so that, in the words of Till's mother, "the world could see what they did to my boy." Juan Williams, *Standing for Justice*, in *Eyes on the Prize* 44 (Viking, 1987). The Till tragedy is also regarded as one of the historical events that bore directly on the emergence of the Civil Rights movement. "[W]ithout question it moved black America in a way the Supreme Court ruling on school desegregation could not match." Id. As Williams later observed, "the murder of Emmitt Till had a powerful impact on a generation of blacks. It was this generation, those who were adolescents when Till was killed, that would soon demand justice and freedom in a way unknown in America before."

by the historical fact that the protection of white female sexuality was often the pretext for terrorizing the Black community. Even today some fear that antirape agendas may undermine antiracist objectives. This is the paradigmatic political and theoretical dilemma created by the intersection of race and gender: Black women are caught between ideological and political currents that combine first to create and then to bury Black women's experiences.

III. When and Where I Enter: Integrating an Analysis of Sexism into Black Liberation Politics

Anna Julia Cooper, a 19th-century Black feminist, coined a phrase that has been useful in evaluating the need to incorporate an explicit analysis of patriarchy in any effort to address racial domination.[55] Cooper often criticized Black leaders and spokespersons for claiming to speak for the race, but failing to speak for Black women. Referring to one of Martin Delaney's public claims that where he was allowed to enter, the race entered with him, Cooper countered: "Only the Black Woman can say, when and where I enter . . . then and there the whole Negro race enters with me."[56]

Cooper's words bring to mind a personal experience involving two Black men with whom I had formed a study group during our first year of law school. One of our group members, a graduate from Harvard College, often told us stories about a prestigious and exclusive men's club that boasted memberships of several past United States presidents and other influential white males. He was one of its very few Black members. To celebrate completing our first-year exams, our friend invited us to join him at the club for drinks. Anxious to see this fabled place, we approached the large door and grasped the brass door ring to announce our arrival. But our grand entrance was cut short when our friend sheepishly slipped from behind the door and whispered that he had forgotten

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Id at 57. Thus, while Brownmiller looks at the Till case and sees the vicious struggle over the possession of a white woman, African Americans see the case as a symbol of the insane degree to which whites were willing to suppress the Black race. While patriarchal attitudes toward women's sexuality played a supporting role, to place white women center stage in this tragedy is to manifest such confusion over racism as to make it difficult to imagine that the white antirape movement could be sensitive to more subtle racial tensions regarding Black women's participation in it.

[55] See Anna Julia Cooper, *A Voice from the South* (Negro Universities Press, 1969 reprint of the Aldine Printing House, Ohio, 1892).

[56] Id at 31.

a very important detail. My companion and I bristled, our training as Black people having taught us to expect yet another barrier to our inclusion; even an informal one-Black-person quota at the establishment was not unimaginable. The tension broke, however, when we learned that *we* would not be excluded because of our race, but that *I* would have to go around to the back door because I was a female. I entertained the idea of making a scene to dramatize the fact that my humiliation as a female was no less painful and my exclusion no more excusable than had we all been sent to the back door because we were Black. But, sensing no general assent to this proposition, and also being of the mind that due to our race a scene would in some way jeopardize all of us, I failed to stand my ground. After all, the Club was about to entertain its first Black guests—even though one would have to enter through the back door.[57]

Perhaps this story is not the best example of the Black community's failure to address problems related to Black women's intersectionality seriously. The story would be more apt if Black women, and only Black women, had to go around to the back door of the club and if the restriction came from within, and not from the outside of the Black community. Still this story does reflect a markedly decreased political and emotional vigilance toward barriers to Black women's enjoyment of privileges that have been won on the basis of race but continue to be denied on the basis of sex.[58]

The story also illustrates the ambivalence among Black women about the degree of political and social capital that ought to be expended toward challenging gender barriers, particularly when the challenges might conflict with the antiracism agenda. While there are a number of reasons—including antifeminist ones—why gender has not figured directly in analyses of the subordination of Black Americans, a central reason is that race is still seen by many as the primary oppositional force in Black lives.[59] If

[57] In all fairness, I must acknowledge that my companion accompanied me to the back door. I remain uncertain, however, as to whether the gesture was an expression of solidarity or an effort to quiet my anger.

[58] To this one could easily add class.

[59] An anecdote illustrates this point. A group of female law professors gathered to discuss "Isms in the Classroom." One exercise led by Pat Cain involved each participant listing the three primary factors that described herself. Almost without exception, white women in the room listed their gender either primarily or secondarily; none listed their race. All of the women of color listed their race first, and then their gender. This seems to suggest that identity descriptions seem to begin with the primary source of opposition with whatever the dominant norm is. See Pat Cain, *Feminist Jurisprudence: Grounding the Theories* 19-20 (unpublished manuscript on file with author) (explaining the exercise and noting that "no

one accepts that the social experience of race creates both a primary group identity as well as a shared sense of being under collective assault, some of the reasons that Black feminist theory and politics have not figured prominently in the Black political agenda may be better understood.[60]

The point is not that African Americans are simply involved in a more important struggle. Although some efforts to oppose Black feminism are based on this assumption, a fuller appreciation of the problems of the Black community will reveal that gender subordination does contribute significantly to the destitute conditions of so many African Americans and that it must therefore be addressed. Moreover, the foregoing critique of the single-issue framework renders problematic the claim that the struggle against racism is distinguishable from, much less prioritized over, the struggle against sexism. Yet it is also true that the politics of racial otherness that Black women experience along with Black men prevent Black feminist consciousness from patterning the development of white feminism. For white women, the creation of a consciousness that was distinct from and in opposition to that of white men figured prominently in the development of white feminist politics. Black women, like Black men, live in a community that has been defined and subordinated by color and culture.[61] Although patriarchy clearly operates within the Black community, presenting yet another source of domination to which Black women are vulnerable, the racial context in which Black women find themselves makes the creation of a political consciousness that is oppositional to Black men difficult.

Yet while it is true that the distinct experience of racial otherness militates against the development of an oppositional feminist consciousness, the assertion of racial community sometimes supports defensive priorities that marginalize Black women. Black

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white woman ever mentions race, whereas every woman of color does" and that, similarly, "straight women do not include 'heterosexual' . . . whereas lesbians who are open always include 'lesbian' ").

[60] For a comparative discussion of Third World feminism paralleling this observation, see Kumari Jayawardena, *Feminism and Nationalism in the Third World* 1-24 (Zed Books Ltd, 1986). Jayawardena states that feminism in the Third World has been "accepted" only within the central struggle against international domination. Women's social and political status has improved most when advancement is necessary to the broader struggle against imperialism.

[61] For a discussion of how racial ideology creates a polarizing dynamic which subordinates Blacks and privileges whites, see Kimberle Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv L Rev 1331, 1371-76 (1988).

women's particular interests are thus relegated to the periphery in public policy discussions about the presumed needs of the Black community. The controversy over the movie *The Color Purple* is illustrative. The animating fear behind much of the publicized protest was that by portraying domestic abuse in a Black family, the movie confirmed the negative stereotypes of Black men.[62] The debate over the propriety of presenting such an image on the screen overshadowed the issue of sexism and patriarchy in the Black community. Even though it was sometimes acknowledged that the Black community was not immune from domestic violence and other manifestations of gender subordination, some nevertheless felt that in the absence of positive Black male images in the media, portraying such images merely reinforced racial stereotypes.[63] The struggle against racism seemed to compel the subordination of certain aspects of the Black female experience in order to ensure the security of the larger Black community.

The nature of this debate should sound familiar to anyone who recalls Daniel Moynihan's diagnosis of the ills of Black America.[64] Moynihan's report depicted a deteriorating Black family, foretold the destruction of the Black male householder and lamented the creation of the Black matriarch. His conclusions prompted a massive critique from liberal sociologists[65] and from civil rights leaders.[66] Surprisingly, while many critics characterized the report as racist for its blind use of white cultural norms as the standard for evaluating Black families, few pointed out the sexism apparent in Moynihan's labeling Black women as pathological for their "failure" to live up to a white female standard of motherhood.[67]

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[62] Jack Matthews, *Three Color Purple Actresses Talk About Its Impact*, LA Times § 6 at 1 (Jan 31, 1986); Jack Matthews, *Some Blacks Critical of Spielberg's Purple*, LA Times § 6 at 1 (Dec 20, 1985). But see Gene Siskel, *Does Purple Hate Men?*, Chicago Tribune § 13 at 16 (Jan 5, 1986); Clarence Page, *Toward a New Black Cinema*, Chicago Tribune § 5 at 3 (Jan 12, 1986).

[63] A consistent problem with any negative portrayal of African Americans is that they are seldom balanced by positive images. On the other hand, most critics overlooked the positive transformation of the primary male character in *The Color Purple*.

[64] Daniel P. Moynihan, *The Negro Family: The Case for National Action* (Office of Policy Planning and Research, United States Department of Labor, 1965).

[65] See Lee Rainwater and William L. Yancey, *The Moynihan Report and the Politics of Controversy* 427-29 (MIT Press, 1967) (containing criticisms of the Moynihan Report by, among others, Charles E. Silberman, Christopher Jencks, William Ryan, Laura Carper, Frank Riessman and Herbert Gans).

[66] Id at 395-97 (critics included Martin Luther King, Jr., Benjamin Payton, James Farmer, Whitney Young, Jr. and Bayard Rustin).

[67] One of the notable exceptions is Jacquelyne Johnson Jackson, *Black Women in a*

The latest versions of a Moynihanesque analysis can be found in the Moyers televised special, *The Vanishing Black Family*,[68] and, to a lesser extent, in William Julius Wilson's *The Truly Disadvantaged*.[69] In *The Vanishing Black Family*, Moyers presented the problem of female-headed households as a problem of irresponsible sexuality, induced in part by government policies that encouraged family breakdown.[70] The theme of the report was that the welfare state reinforced the deterioration of the Black family by rendering the Black male's role obsolete. As the argument goes, because Black men know that someone will take care of their families, they are free to make babies and leave them. A corollary to the Moyers view is that welfare is also dysfunctional because it allows poor women to leave men upon whom they would otherwise be dependent.

Most commentators criticizing the program failed to pose challenges that might have revealed the patriarchal assumptions underlying much of the Moyers report. They instead focused on the dimension of the problem that was clearly recognizable as racist.[71] White feminists were equally culpable. There was little, if any, published response to the Moyers report from the white feminist community. Perhaps feminists were under the mistaken assumption that since the report focused on the Black community,

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Racist Society, in *Racism and Mental Health* 185-86 (University of Pittsburgh Press, 1973).

[68] *The Vanishing Black Family* (PBS Television Broadcast, January 1986).

[69] William Julius Wilson, *The Truly Disadvantaged: The Inner City, The Underclass and Public Policy* (The University of Chicago Press, 1987).

[70] Columnist Mary McGrory, applauding the show, reported that Moyers found that sex was as common in the Black ghetto as a cup of coffee. McGrory, *Moynihan was Right 21 Years Ago*, The Washington Post B1 and B4 (Jan 26, 1986). George Will argued that oversexed Black men were more of a menace than Bull Conner, the Birmingham Police Chief who in 1968 achieved international notoriety by turning fire hoses on protesting school children. George Will, *Voting Rights Won't Fix It*, The Washington Post A23 (Jan 23, 1986).

My guess is that the program has influenced the debate about the so-called underclass by providing graphic support to pre-existing tendencies to attribute poverty to individual immorality. During a recent and memorable discussion on the public policy implications of poverty in the Black community, one student remarked that nothing can be done about Black poverty until Black men stop acting like "roving penises," Black women stop having babies "at the drop of a hat," and they all learn middle-class morality. The student cited the Moyers report as her source.

[71] Although the nearly exclusive focus on the racist aspects of the program poses both theoretical and political problems, it was entirely understandable given the racial nature of the subsequent comments that were sympathetic to the Moyers view. As is typical in discussions involving race, the dialogue regarding the Moyers program covered more than just the issue of Black families; some commentators took the opportunity to indict not only the Black underclass, but the Black civil rights leadership, the war on poverty, affirmative action and other race-based remedies. See, for example, Will, *Voting Rights Won't Fix It* at A23 (cited in note 70).

the problems highlighted were racial, not gender based. Whatever the reason, the result was that the ensuing debates over the future direction of welfare and family policy proceeded without significant feminist input. The absence of a strong feminist critique of the Moynihan/Moyers model not only impeded the interests of Black women, but it also compromised the interests of growing numbers of white women heads of household who find it difficult to make ends meet.[72]

William Julius Wilson's *The Truly Disadvantaged* modified much of the moralistic tone of this debate by reframing the issue in terms of a lack of marriageable Black men.[73] According to Wilson, the decline in Black marriages is not attributable to poor motivation, bad work habits or irresponsibility but instead is caused by structural economics which have forced Black unskilled labor out of the work force. Wilson's approach represents a significant move away from that of Moynihan/Moyers in that he rejects their attempt to center the analysis on the morals of the Black community. Yet, he too considers the proliferation of female-headed households as dysfunctional *per se* and fails to explain fully why such households are so much in peril. Because he incorporates no analysis of the way the structure of the economy and the workforce subordinates the interests of women, especially childbearing Black women, Wilson's suggested reform begins with finding ways to put Black men back in the family.[74] In Wilson's view, we must change the economic structure with an eye toward providing more Black jobs for Black men. Because he offers no critique of sexism, Wilson fails to consider economic or social reorganization that directly empowers and supports these single Black mothers.[75]

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[72] Their difficulties can also be linked to the prevalence of an economic system and family policy that treat the nuclear family as the norm and other family units as aberrant and unworthy of societal accommodation.

[73] Wilson, *The Truly Disadvantaged* at 96 (cited in note 69).

[74] Id at 154 (suggestions include macroeconomic policies which promote balanced economic growth, a nationally-oriented labor market strategy, a child support assurance program, a child care strategy, and a family allowances program which would be both means tested and race specific).

[75] Nor does Wilson include an analysis of the impact of gender on changes in family patterns. Consequently, little attention is paid to the conflict that may result when gender-based expectations are frustrated by economic and demographic factors. This focus on demographic and structural explanations represent an effort to regain the high ground from the Moyers/Moynihan approach which is more psycho-social. Perhaps because psycho-social explanations have come dangerously close to victim-blaming, their prevalence is thought to threaten efforts to win policy directives that might effectively address deteriorating conditions within the working class and poor Black communities. See Kimberle Crenshaw, *A Comment on Gender, Difference, and Victim Ideology in the Study of the Black Family,* in

My criticism is not that providing Black men with jobs is undesirable; indeed, this is necessary not only for the Black men themselves, but for an entire community, depressed and subject to a host of sociological and economic ills that accompany massive rates of unemployment. But as long as we assume that the massive social reorganization Wilson calls for is possible, why not think about it in ways that maximize the choices of Black women?[76] A more complete theoretical and political agenda for the Black underclass must take into account the specific and particular concerns of Black women; their families occupy the bottom rung of the economic ladder, and it is only through placing them at the center of the analysis that their needs and the needs of their families will be directly addressed.[77]

IV. EXPANDING FEMINIST THEORY AND ANTIRACIST POLITICS BY EMBRACING THE INTERSECTION

If any real efforts are to be made to free Black people of the constraints and conditions that characterize racial subordination, then theories and strategies purporting to reflect the Black community's needs must include an analysis of sexism and patriarchy. Similarly, feminism must include an analysis of race if it hopes to express the aspirations of non-white women. Neither Black liberationist politics nor feminist theory can ignore the intersectional experiences of those whom the movements claim as their respective constituents. In order to include Black women, both movements must distance themselves from earlier approaches in which experiences are relevant only when they are related to certain clearly identifiable causes (for example, the oppression of Blacks is significant when based on race, of women when based on gender). The praxis of both should be centered on the life chances and life situations of people who should be cared about without regard to the source of their difficulties.

I have stated earlier that the failure to embrace the complexities of compoundedness is not simply a matter of political will, but

The Decline of Marriage Among African Americans: Causes, Consequences and Policy Implications (forthcoming 1989).

[76] For instance, Wilson only mentions in passing the need for day care and job training for single mothers. Wilson at 153 (cited in note 69). No mention at all is made of other practices and policies that are racist and sexist, and that contribute to the poor conditions under which nearly half of all Black women must live.

[77] Pauli Murray observes that the operation of sexism is at least the partial cause of social problems affecting Black women. See Murray, *The Liberation of Black Women*, in Jo Freeman, ed, *Women: A Feminist Perspective* 351-62 (Mayfield Publishing Co, 1975).

is also due to the influence of a way of thinking about discrimination which structures politics so that struggles are categorized as singular issues. Moreover, this structure imports a descriptive and normative view of society that reinforces the status quo.

It is somewhat ironic that those concerned with alleviating the ills of racism and sexism should adopt such a top-down approach to discrimination. If their efforts instead began with addressing the needs and problems of those who are most disadvantaged and with restructuring and remaking the world where necessary, then others who are singularly disadvantaged would also benefit. In addition, it seems that placing those who currently are marginalized in the center is the most effective way to resist efforts to compartmentalize experiences and undermine potential collective action.

It is not necessary to believe that a political consensus to focus on the lives of the most disadvantaged will happen tomorrow in order to recenter discrimination discourse at the intersection. It is enough, for now, that such an effort would encourage us to look beneath the prevailing conceptions of discrimination and to challenge the complacency that accompanies belief in the effectiveness of this framework. By so doing, we may develop language which is critical of the dominant view and which provides some basis for unifying activity. The goal of this activity should be to facilitate the inclusion of marginalized groups for whom it can be said: "When they enter, we all enter."